

# THE REA LETTER

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## Monthly Human Resources and Labor Relations Digest

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### Memorial Day Holiday

Our office will be closed in observance of Memorial Day, Monday, May 31, 2021. We wish everyone a safe and happy holiday.

### California Meal Period Penalties

We last wrote about California Meal Period issues in our September 2020 issue of The Rea Letter.

We have continued to have Client's experience issues regarding meal periods and the penalty which is 1 hour of straight-time pay for failing to provide a meal period, failing to provide a full thirty-minute meal period, and failing to provide the meal period at or before the 5<sup>th</sup> hour of work.

We have long recommended that the practice of "rounding" for pay purposes be eliminated in order to protect from allegations of failure to pay for all time worked. Recently the California Supreme Court held that rounding in terms of recording the mandatory thirty-minute meal period, started at or before the fifth hour is **expressly prohibited**.

In our September issue, we strongly recommended that Clients and Friends develop policies that did not push the envelope with regard to the timing of the start of the meal period, (at or before the 5<sup>th</sup> hour) but rather schedule meal periods to begin between an amount of time before the fifth hour so as to allow for any issues that might get in the way of clocking out for the meal period in a timely fashion. We also recommended immediate investigation of any time clock punch that indicates a full thirty minute was not taken or provided **immediately following each occurrence**.

We have experienced Client Meal Period issues where the time keeping system automatically pays the penalty of one hour at straight time for meal periods beginning after the start of the 5<sup>th</sup> hour of work and for meal periods

of less than thirty minutes. Upon further investigation we have ascertained in some cases that **enforcement** of the meal period requirements is virtually non-existent. In these cases, it was difficult to characterize the employees' actions as abusive when, in fact, no effort was being made to enforce a policy of compliance. One hour of pay in a day is equivalent to at least a 12.5% increase.

We recommend all Clients and Friends conduct periodic reviews of their meal period policies and enforcement to make certain compliance with the law is occurring and that there is no abuse.

### CFRA Expansion Reminder

It has recently come to our attention the need to remind clients to review their current practices to ensure compliance with the new California Family Rights Act (CFRA).

Effective January 1, 2021, CFRA was expanded. The below are notable changes:

- CFRA now applies to smaller employers. CFRA previously applied to private employers with 50 or more employees within 75 miles of the worksite but it has now expanded to apply to employers with five or more employees and no longer requires that employees work within 75 miles of the worksite.
- The expansion now grants parents of a child employed by the same employer with 12 weeks of leave to each employee – it previously only granted a total of 12 weeks combined to both parents.
- Expands the definition of "family member" for whom 12 workweeks of unpaid protected leave during any 12-month period may be taken to include siblings, grandparents, grandchildren, and domestic parents. The definition of "child" is also expanded to cover

all adult children regardless of whether they are dependent or the children of a domestic partner.

- Employers are now required to reinstate a salaried employee who is among the highest paid 10% of the employer's employees if certain requirements are met.

### **CalSavers Program Required Enrollment Reminder**

An article was posted in the February 2021 edition of The Rea Letter regarding the CalSavers program. As a reminder, this program is an automatic payroll deduction IRA program, and all California eligible employers are required to enroll unless the employer already offers a tax-qualified retirement plan to employees. Once the employer has enrolled, all eligible employees are automatically enrolled in the program unless the employee decides to opt out.

Although the large employer (100+ employees) registration deadline passed on September 30, 2020, the other program enrollment deadlines remain unchanged with the following deadline for employers approaching:

- More than 50 employees: June 30, 2021
- 5 or more employees: June 30, 2022

There are no employer fees to participate and the program does not allow employers to match employee contributions. The program is set up so that fees for participation in the program are paid by employees via deduction from the assets pulled directly from each Roth account. Even though there is no fee to register, employers could face financial penalties ranging from \$250-\$500 per eligible employee for failing to comply with the CalSaver mandate to offer a qualified retirement savings option to those eligible. To avoid penalties, eligible employers can obtain a qualified retirement plan through the private market or should contact the CalSaver program to register as soon as possible.

### **Pre-Employment Background Checks More Complex, But Still Very Important**

Today the complexities of complying with the various laws regarding the completion of Background Checks create significant liabilities for employers, especially in California. Our office encourages all employers to

complete a background investigation and drug screen prior to employment.

Our office also encourages all Clients and Friends to make certain that the policies and procedures utilized in the background check process are compliant from start to finish.

We have encountered mistakes made by clients in the decision-making process following the conditional offer of employment and receipt of the results of the background check. These have included making decisions based upon negative results that are **not related** in any way to the position for which the individual is being considered. Examples include not hiring an individual for a non-driving position who has traffic violations and withdrawing an offer of employment because of a poor credit history when the position has nothing to do with money. Another mistake - failing to make the pre-adverse action disclosure to the individual properly and the worst - hiring and allowing individual to start work prior to the completion of the background check, only to ascertain that the results won't allow for continued employment in the position.

Background checks are expensive. For this reason, the extent of the background check should be specifically related to the position. Running a DMV report is generally not necessary for a non-driving position. The decision of what areas to include in the background check must be position specific and be the same for all individuals for whom a conditional offer is made for that position. There should not be background check variations for individuals for the same position based upon such things as age, race, religion etc.

Background checks are still a very important component of the pre-employment process even though the laws such as the Fair Credit and Reporting Act (FCRA) have made their completion much more cumbersome. Dealing with a reputable agency who completes the background process will help ensure compliance.

Should you desire assistance in evaluating your pre-employment background check process please don't hesitate to contact us.

## CONSUMER PRICE INDEX

### Consumer Price Index for All Urban Consumers, CPI-U.

The Los Angeles-Long Beach-Anaheim Consumer Price Index (not seasonally adjusted) for March 2021 was 282.648, a 0.5% increase from February 2021, and a 2.2% increase over the last 12 months.

The United States City Average, Consumer Price Index (not seasonally adjusted) for March 2021 was 264.877, a 0.7% increase from February 2021 and a 2.6% increase over the last 12 months.

#### Los Angeles-Long Beach-Anaheim

March	2021	282.648
February	2021	281.347
March	2020	276.589

#### United States City Average

March	2021	264.877
February	2021	263.014
March	2020	258.115

### Consumer Price Index for Urban Wage Earners & Clerical Workers, CPI-W.

The Los Angeles-Long Beach-Anaheim Consumer Price Index (not seasonally adjusted) for March 2021 was 274.097, a 0.5% increase from February 2021 and a 2.7% increase in the last 12 months.

The United States City Average Consumer Price Index (not seasonally adjusted) for March 2021 was 258.935, a 0.8% increase from February 2021 and a 3.0% increase in the last 12 months.

#### Los Angeles-Long Beach-Anaheim

March	2021	274.097
February	2021	272.816
March	2020	266.964

#### United States City Average

March	2021	258.935
February	2021	256.843
March	2020	251.375

**All Consumer Price Indexes are based on 1982-1984.**

## HUMAN RESOURCES PICTURE

### California Employment

The California seasonally adjusted unemployment rate for March 2021 was 8.3% for the month.

### Los Angeles Employment

The Los Angeles seasonally adjusted unemployment rate decreased over the month to 11.3% in March 2021 from a revised 11.5% in February 2021 and was above the rate of 5.4% one year ago.

### National Employment

The national unemployment rate for March 2021 edged down to 6.0%. Job growth was widespread in March, led by gains in leisure and hospitality, public and private education, and construction.

### National Wage and Hours

Real average hourly earnings for all employees decreased 0.8% from February to March, seasonally adjusted. This stems from 0.1% decrease in average hourly earnings, combined with a 0.6% increase in the CPI-U.

#### The Rea Company

Human Resources/Labor Relations, Unemployment and COBRA, services

239 E. Alameda Ave, Suite 201  
Burbank, California

**Please direct mail to P.O. Box 869**  
Burbank, California 91503

Phone: (818) 845-7444 - Fax (818) 566-1724

[www.thereaco.com](http://www.thereaco.com)

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Phone (818) 845-7462

Matthew Rea

Fax (818) 566-1724

[mr@thereaco.com](mailto:mr@thereaco.com)

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*The best expression of appreciation we can receive is an introduction by a satisfied client to a colleague or friend who may also benefit from our services.*